

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JACQUES AURELUS	:	CIVIL ACTION
v.	:	
KENNETH J. ELWOOD,	:	
District Director of the	:	
Immigration and Naturalization	:	
Service ¹	:	NO. 02-4517

ORDER

AND NOW, this 8th day of January, 2003, upon consideration of Jacques Aurelus's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, and Kenneth Elwood's response thereto, and the Court finding that:

(a) Jacques Aurelus has been held in INS detention while awaiting a final determination on removal since about October of 2001, and he is now confined in Berks County Prison;

(b) On April 4, 2002, Immigration Judge (IJ) Walter A. Durling issued a custody Order releasing Aurelus on \$15,000 bond;

(c) The next day, however, the Board of Immigration Appeals (BIA) vacated the Order, consigning Aurelus to continued INS detention;

(d) On July 5, 2002, Aurelus filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging his confinement as an infringement of liberty without due process of law under the Fifth Amendment of the United States Constitution and Patel v. Zemski, 275 F.3d 299 (3d Cir. 2001);

¹ We have substituted Kenneth Elwood, the current District Director of the Immigration and Naturalization Service (INS), for the named respondent, Charles Zemski, pursuant to Fed. R. Civ. P. 25(d).

(e) In his response to the petition, District Director Elwood acknowledges the "thorny constitutional issues" the BIA's Order raises, and agrees to release Aurelus under the terms of the IJ's Order, that is, on \$15,000 bond, Gov't's Resp. at 11-13;

(f) Accordingly, and because the IJ's Order is the individualized custody determination Patel mandated (in conformity with the Due Process Clause), we shall order that Jacques Aurelus be released immediately on \$15,000 bond;

It is hereby ORDERED that:

1. The petition for a writ of habeas corpus is GRANTED;
2. The Order of the Board of Immigration Appeals entered April 5, 2002 (which vacates the Order of the Immigration Judge entered on the previous day) is VACATED;
3. The District Director shall IMMEDIATELY RELEASE Jacques Aurelus from INS detention on \$15,000 bond; and
4. The Clerk shall CLOSE this civil action statistically.

BY THE COURT:

Stewart Dalzell, J.